Supreme Court, U.S.
FILED

96 649 OCT 23 1996

OFFICE OF THE CLERK

No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

TECHNICAL SERGEANT FRANKLIN T. WILSON,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

PETITION FOR WRIT OF CERTIORARI

ORMOND R. FODREA
Major, United States Air Force
Appellate Defense Counsel
Counsel of Record

KEVIN P. KOEHLER
Major, United States Air Force
Appellate Defense Counsel
Counsel for the Petitioner

Air Force Legal Services Agency
Appellate Defense Division
112 Luke Avenue, Suite 343
Bolling AFB, DC 20332-8000
(202) 767-1562

October 1996

22 pp

QUESTION PRESENTED

Whether the petitioner's pleas of guilty to the charge and specifications of use and possession of cocaine were improvident as a matter of due process because petitioner became addicted to cocaine as a result of his undercover work with local police authorities and the Office of Special Investigations' actions were outrageous.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. ———

TECHNICAL SERGEANT FRANKLIN T. WILSON,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

---

PETITION FOR WRIT OF CERTIORARI

The petitioner, Technical Sergeant Franklin T. Wilson respectfully prays that a writ of certiorari issue to review the order and judgment of the United States Court of Appeals for the Armed Forces entered in his case on July 30, 1996.

OPINIONS BELOW

The order and judgment of the United States Court of Appeals for the Armed Forces, reported at 44 M.J. 223 (1996), is located at Appendix A. The opinion of the United States Air Force Court of Criminal Appeals, reported at 41 M.J. 668 (1994), is located at Appendix B.

JURISDICTION

The final order of the United States Court of Appeals for the Armed Forces was entered on July 30, 1996. The jurisdiction of this Court is invoked under 28 U.S.C.

Sec. 1259(3) (West Supp. 1995) and 10 U.S.C. Sec. 867(a) (West Supp. 1994).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the Constitution of the United States provides in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

On October 7 and 8 1992, petitioner was tried by a general court-martial consisting of a military judge sitting alone at Shaw Air Force Base, South Carolina. In accordance with his pleas he was found guilty of cocaine use (3 specifications) and of cocaine possession, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. Sec 912a. Contrary to his pleas, he was found guilty of communicating threats to an agent of the Air Force Office of Special Investigations (OSI) (2 specifications), in violation of Article 134, UCMJ, 10 U.S.C. Sec 934. He was sentenced to a bad conduct discharge, 14 months' confinement, and reduction to airman basic (E-1). On December 22, 1992, the convening authority approved this sentence.

At his trial, the petitioner testified during a providency inquiry that he worked as an undercover agent for the Sumter County, South Carolina, police department in order to combat drug use among the children on his softball team at a local Salvation Army Boys' Club. On one particular occasion, the petitioner was involved in a drug bust of "Fat Mike," a local drug dealer. Later that evening, friends of "Fat Mike" accused the petitioner of setting him up, and the petitioner was forced to use crack cocaine. From that moment on, he became addicted to the drug. Petitioner claimed that the police knew he was addicted to the drug but nevertheless kept using him as an informant.

On November 22, 1994, the Air Force Court of Criminal Appeals set aside petitioner's conviction for drug use while he was acting as an informant for the Sumter County, S.C., Sheriff's Department. However, it upheld his conviction for drug use and possession after his association with that law enforcement agency was terminated. It affirmed a sentence of a bad-conduct discharge, confinement for 12 months, and reduction to E-2 (Appendix B).

On June 30, 1995, the Court of Appeals for the Armed Forces granted review on the following issue of law:

> WHETHER APPELLANT'S PLEAS OF GUILTY TO THE SPECIFICATIONS OF CHARGE I (USE AND POSSESSION OF COCAINE) WERE IMPROVIDENT AS A MATTER OF DUE PROCESS BECAUSE APPELLANT BECAME ADDICTED TO COCAINE AS A RESULT OF HIS UNDERCOVER WORK WITH LOCAL POLICE AUTHORITIES AND THE OSI'S ACTIONS WERE OUTRAGEOUS.

On July 30, 1996, the Court of Appeals for the Armed Forces issued its decision, holding that the petitioner's pleas of guilty were provident and that the petitioner was not entrapped by outrageous conduct on behalf of the Government.

REASONS FOR GRANTING THE WRIT

PETITIONER'S PLEAS OF GUILTY TO USE AND POSSESSION OF COCAINE (CHARGE I AND ITS SPECIFICATIONS) WERE IMPROVIDENT AS A MATTER OF DUE PROCESS BECAUSE PETITIONER BECAME ADDICTED TO COCAINE AS A RESULT OF HIS UNDERCOVER WORK WITH LOCAL POLICE AUTHORITIES AND THE OFFICE OF SPECIAL INVESTIGATIONS ACTIONS WERE OUTRAGEOUS.

Petitioner's drug use subsequent to the time when he had to protect himself from detection by "Fat Mike's" friends was not voluntary but the result of the extremely

addictive nature of crack cocaine. *United States v. Flannigan*, 31 M.J. 240 (1990). In addition, the petitioner was entrapped into possessing the cocaine because the conduct used by the OSI agents was outrageous. The agents in petitioner's case knew he was addicted to cocaine and invited him to a hotel room where they told him he could get drugs for free.

CONCLUSION

Petitioner's pleas of guilty to cocaine use and possession were improvident as a matter of due process when he became addicted to cocaine as a result of his undercover work with local law enforcement personnel and the OSI's conduct was outrageous. Petitioner was denied his constitutional right to due process under the Fifth Amendment.

Respectfully submitted,

ORMOND R. FODREA
Major, United States Air Force
Appellate Defense Counsel
Counsel of Record

KEVIN P. KOEHLER
Major, United States Air Force
Appellate Defense Counsel
Counsel for the Petitioner

Air Force Legal Services Agency
Appellate Defense Division
112 Luke Avenue, Suite 343
Bolling AFB, DC 20332-8000
(202) 767-1562

October 1996